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CONSTITUTIONAL AMENDMENTS GIVEN “FIRST CONSIDERATION” APPROVAL BY THE 2009 WISCONSIN LEGISLATURE

INTRODUCTION

Three proposals to amend the Wisconsin Constitution were adopted on first consideration by the 2009 Wisconsin Legislature and are eligible for second consideration by the 2011 Legislature. They relate to: 1) modifying the veto power of county executives; 2) broadening the circumstances under which government may exercise emergency powers; and 3) prohibiting the governor from vetoing parts of bill sections.

Sections Affected	Resolutions	Subject
Article IV, Sec. 23a	2009 Senate Joint Resolution 11 (Enrolled Joint Resolution 27)	Prohibiting county executives from using partial veto powers to create new words by rejecting individual letters or to create a new sentence by combining parts of two or more sentences.
Article IV, Sec. 34	2009 Assembly Joint Resolution 59 (Enrolled Joint Resolution 14)	Eliminating the limitation of the government's exercise of emergency power to situations resulting from enemy actions in the form of attack.
Article V, Sec. 10 (1) (c)	2009 Senate Joint Resolution 61 (Enrolled Joint Resolution 40)	Prohibiting governors from vetoing parts of bill sections.

Legislative passage of a constitutional amendment on “first consideration” is the first step in the amending process. According to Article XII, Section 1, of the Wisconsin Constitution, amendments must be adopted by two successive legislatures and ratified by the electorate.

On first consideration, a proposed change is offered as a joint resolution that does not have to be submitted to the governor for approval. If the resolution is adopted by both houses, the resolution must be published for three consecutive months prior to the next general election. Then, a second joint resolution embodying the identical constitutional text must be offered on

“second consideration” in the next legislature, and the wording of the proposed amendment must be approved without change. The second joint resolution specifies the wording of the ballot question(s) and sets the date for submitting the question(s) to the people at a statewide election. (The portions of the joint resolution relating to the ballot question and referendum date can be amended.)

I. MODIFYING PARTIAL VETO POWERS OF COUNTY EXECUTIVE

A. Analysis

The constitution grants the chief executive of a county the power to approve appropriations contained in resolutions or ordinances in whole or part. This executive power is similar to that granted the governor with respect to appropriations bills. In fact, in 1984, the attorney general opined that the county executive’s veto power over appropriations “is not dissimilar to that of the Governor” (OAG 27-84). This proposed constitutional amendment, proposed to the 2009 legislature on first consideration, provides that, in approving an appropriation in part, the county executive may not create a new word by rejecting individual letters in the words of the resolution or ordinance and may not create a new sentence by combining parts of two or more sentences of the resolution or ordinance. These are the identical restrictions that are currently placed on the governor in the exercise of his or her veto power over appropriations bills.

A proposed constitutional amendment requires adoption by two successive legislatures, and ratification by the people, before it can become effective.

B. Text

SECTION 1. Section 23a of article IV of the constitution is renumbered 23a (1) of article IV of the constitution.

SECTION 2. Section 23a (2) of article IV of the constitution is created to read:

[Article IV] Section 23a (2) In approving an appropriation in part under sub. (1), the chief executive may not create a new word by rejecting individual letters in the words of the resolution or ordinance and may not create a new sentence by combining parts of 2 or more sentences of the resolution or ordinance.

SECTION 3. Numbering of new provisions. The new subsection (2) of section 23a of article IV of the constitution created in this joint resolution shall be designated by the next higher open whole subsection number in that section in that article if, before the ratification by the people of the amendment proposed in this joint resolution, any other ratified amendment has created a subsection (2) of section 23a of article IV of the constitution of this state. If one or more joint resolutions create a subsection (2) of section 23a of article IV simultaneously with the ratification by the people of the amendment proposed in this joint resolution, the subsections created shall be numbered and placed in a sequence so that the subsections created by the joint resolution having the lowest enrolled joint resolution number have the numbers designated in that joint resolution and the subsections created by the other joint resolutions have numbers that are in the same ascending order as are the numbers of the enrolled joint resolutions creating the subsections.

C. Background

For more than a century after statehood, Wisconsin's counties had no unified executive authority; rather the executive power of counties rested with the various elected county officers enumerated in Article IV, Section 4 of the Wisconsin Constitution. Chapter 327, Laws of 1959, created the office of county executive for Milwaukee County, which had a much higher population and was much more urban than any other county. In creating the office, the legislature created a veto power for the county executive that included a partial veto authority for appropriations measures similar to that enjoyed by Wisconsin's governor. The new statute was immediately challenged on the grounds that it violated Article IV, Section 23 of the constitution, which required the legislature to provide a uniform form of county government. In *State ex rel. Milwaukee County v. Boos*, 8 Wis. 2d 215 (1959), the supreme court ruled that the creation of a county executive for the state's most urban county was permissible, but that the veto power constituted an unconstitutional variation from required uniformity. The legislature quickly adopted on first consideration a constitutional amendment authorizing the office of county executive for populous counties and incorporating virtually word for word the veto power of the overturned statute into the constitution. Milwaukee County elected its first county executive in April 1960. The 1961 legislature approved the constitutional amendment on second consideration and it was ratified by the voters in November 1962.

A constitutional amendment approved by the voters in April 1969 eliminated the uniformity requirement for county government and authorized the creation of a county executive in any county. Currently, 11 counties have chosen to create the office of county executive, including Milwaukee.

Around the time that the authority to create the new office was extended to all counties, Wisconsin governors became much more aggressive in the use of their partial veto power; striking out individual words to create new sentences and even individual letters to create new words. This broadened use was controversial as it affected the balance of power between two coequal branches of government. The supreme court in *State ex rel. Kleczka v. Conta*, 82 Wis. 2d 679, offered a broad interpretation of the governor's partial veto authority. The issue remained contentious enough that the governor's partial veto power was twice curtailed by constitutional amendment. In 1990, voters prohibited the governor from creating new words by vetoing individual letters. In 2008, an amendment prohibiting the creation of new sentences from parts of other sentences was approved.

An opinion by Attorney General Bronson La Follette in 1984 asserted that the veto power of the county executives mirrored that of the governor (73 OAG 92). Despite the controversy over the governor's partial veto power, no attempt was made to modify the constitutional authority of county executives until 2009 Senate Joint Resolution 11 was introduced on February 5, 2009. A press release by the author, Senator Tim Carpenter, indicated that the use of veto tactics recently prohibited to governors by Milwaukee County Executive Scott Walker on the county budget resolution was the immediate reason for the proposed constitutional amendment.

It is noteworthy that another constitutional amendment adopted on first consideration during the 2009 session further restricts the governor's veto authority. If this amendment is approved on second consideration by the 2011 legislature and ratified by the people, the veto powers of the governor and county executives will remain out of alignment even if the provisions of SJR-11 become part of the constitution as well. (See Part III of this brief.)

D. Legislative Action

The legislative history of 2009 Senate Joint Resolution 11, as recorded in the *Bulletin of Proceedings*, is excerpted below:

Senate Joint Resolution 11

To renumber section 23a of article IV; and to create section 23a (2) of article IV of the constitution; relating to: veto power of county executive over appropriations (first consideration).

2009

- 02-05. S. Introduced by Senators **Carpenter, Lehman** and **Harsdorf**; cosponsored by Representatives **Pasch, Van Akkeren, Lothian** and **Townsend**.
- 02-05. S. Read first time and referred to committee on Ethics Reform and Government Operations 51
- 04-29. S. Public hearing held.
- 06-03. S. Executive action taken.
- 06-03. S. Report adoption recommended by committee on Ethics Reform and Government Operations, Ayes 4, Noes 1 192
- 06-03. S. Available for scheduling.
- 09-08. S. Placed on calendar 9-15-2009 by committee on Senate Organization 299
- 09-15. S. Read a second time 303
- 09-15. S. Ordered to a third reading 303
- 09-15. S. Rules suspended 303
- 09-15. S. Read a third time and **adopted**, Ayes 32, Noes 0 303
- 09-15. S. Ordered immediately messaged 304
- 09-16. A. Received from Senate 375

- 09-16. A. Read first time and referred to committee on State Affairs and Homeland Security 376
- 12-03. A. Public hearing held.
- 12-17. A. Executive action taken.

2010

- 01-12. A. Report concurrence recommended by committee on State Affairs and Homeland Security, Ayes 8, Noes 0 569
- 01-12. A. Referred to committee on Rules 569
- 01-20. A. Placed on calendar 1-26-2010 by committee on Rules.
- 01-26. A. Read a second time 605
- 01-26. A. Representative Ziegelbauer added as a cosponsor 605
- 01-26. A. Ordered to a third reading 605
- 01-26. A. Rules suspended 605
- 01-26. A. Read a third time and **concurred in**, Ayes 97, Noes 1 605
- 01-26. A. Ordered immediately messaged 605
- 01-26. S. Received from Assembly concurred in .. 512
- 01-29. S. Report correctly enrolled on 1-29-2010 . 528
- 02-08. S. Deposited in the office of the Secretary of State on 2-8-2010. 547
- 02-16. S. Published 2-22-2010, 8-3-2010, 9-7-2010, 10-5-2010 562

Enrolled Joint Resolution 27.

II. CONTINUITY OF GOVERNMENT IN SITUATIONS OTHER THAN ENEMY ATTACK

A. Analysis

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This proposed constitutional amendment, proposed to the 2009 legislature on first consideration, was prepared for the Joint Legislative Council's Special Committee on Emergency Management and Continuity of Government.

Article IV, section 34, of the Wisconsin Constitution provides that the legislature, to ensure continuity of state and local government operations in periods of emergency resulting from enemy attack, must provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may be unavailable to carry on the powers and duties of the offices. In addition, the legislature must adopt any other measures that may be necessary to obtain the objectives of that section of the constitution.

This substitute amendment amends that provision in article IV, section 34, of the Wisconsin Constitution to strike the phrase “enemy action in the form of an attack,” and substitute “a severe or prolonged, natural or human-caused, occurrence that threatens life, health, or the security of the state,” thereby providing for legislative action to ensure continuity in periods of emergency, whether resulting from enemy attack or from other causes.

B. Text

SECTION 1. Section 34 of article IV of the constitution is amended to read:

[Article IV] Section 34. The legislature, in order to ensure continuity of state and local governmental operations in periods of emergency resulting from ~~enemy action in the form of an attack~~ a severe or prolonged, natural or human-caused, occurrence that threatens life, health, or the security of the state, shall (1) forthwith provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) adopt such other measures as may be necessary and proper for attaining the objectives of this section.

C. Background

The people of Wisconsin approved a constitutional amendment authorizing the legislature to provide for continuity of government in the event of enemy attack in April 1961. The amendment was based on model criteria provided by the federal Office of Civil Defense Mobilization, the Council of State Governments, and the governor's Economic Controls Advisory Committee to the State Civil Defense Director. The legislature enacted Chapter 435, Laws of 1961, the following August, codifying procedures for continuity of government in the event of enemy attack. The substance of this law remains codified in Subchapter V of Chapter 323, Wisconsin Statutes. There had been no attempt to broaden the legislature's emergency authority until the 2009 legislative session.

The Joint Legislative Council's Special Committee on Emergency Management and Continuity of Government was created in 2008; among its duties was to study the continuity of legislative operations during emergencies. Meeting between July 2008 and April 2009, the committee recommended extending the legislature's emergency powers to situations beyond enemy attack. Assembly Joint Resolution 59 was introduced on June 16; the Special Committee recommended adoption of the joint resolution in its final report on June 19. In September, the assembly adopted Assembly Substitute Amendment 1 to AJR-59, which specified that the period of emergency must be the result of "a severe or prolonged, natural or human-caused, occurrence that threatens life, health, or the security of the state."

D. Legislative Action

The legislative history of 2009 Assembly Joint Resolution 59, as recorded in the *Bulletin of Proceedings*, is excerpted below:

Assembly Joint Resolution 59

To amend section 34 of article IV of the constitution; relating to: continuity of government (first consideration).

2009

06-16. A. Introduced by **Joint Legislative Council**.

06-16. A. Read first time and referred to committee on State Affairs and Homeland Security 265

07-02. A. Public hearing held.

07-16. A. Executive action taken.

07-16. A. Assembly substitute amendment 1 offered by committee on State Affairs and Homeland Security 340

07-24. A. Report Assembly Substitute Amendment 1 adoption, Ayes 7, Noes 0, adoption as amended recommended by committee on State Affairs and Homeland Security, Ayes 7, Noes 0 341

07-24. A. Referred to committee on Rules 341

09-15. A. Placed on calendar 9-17-2009 by committee on Rules.

09-17. A. Read a second time 387

09–17. A. Assembly substitute amendment 1 adopted 38 7	09–22. S. Read a second time 317
09–17. A. Ordered to a third reading 387	09–22. S. Ordered to a third reading 317
09–17. A. Rules suspended 387	09–22. S. Rules suspended 317
09–17. A. Read a third time and adopted , Ayes 89, Noes 7 387	09–22. S. Read a third time and concurred in , Ayes 29, Noes 3 317
09–17. A. Ordered immediately messaged 388	09–22. S. Ordered immediately messaged 320
09–18. S. Received from Assembly 313	09–22. A. Received from Senate concurred in 408
09–21. S. Read first time and referred to committee on Senate Organization 314	09–30. A. Report correctly enrolled 417
09–21. S. Available for scheduling.	10–13. A. Deposited in the office of the Secretary of State on 9–30–2009 430
09–22. S. Rules suspended to withdraw from committee on Senate Organization and take up 317	Enrolled Joint Resolution 14. 10–13. A. Published 10–14–2009, 8–3–2010, 9–7–2010, 10–5–2010 430

III. PROHIBITING PARTIAL VETOES OF PARTS OF BILL SECTIONS

A. Analysis

This proposed constitutional amendment, proposed to the 2009 legislature on first consideration, amends the Wisconsin Constitution to prohibit the governor, in exercising his or her partial veto power over an appropriations bill, from partially vetoing parts of bill sections of an enrolled bill without rejecting the entire bill section. Currently, in exercising the partial veto power, the governor is limited only insofar as that he or she may not create a new word by rejecting individual letters in the words of the enrolled bill, and may not create a new sentence by combining parts of two or more sentences of the enrolled bill. The new restriction on the governor’s partial veto power contained in this resolution subsumes and expands on the current restrictions in the constitution.

B. Text

SECTION 4. Section 10 (1) (c) of article V of the constitution is amended to read:

[Article V] Section 10 (1) (c) In approving an appropriation bill in part, the governor may not ~~create a new word by rejecting individual letters in the words of the enrolled bill, and may not create a new sentence by combining parts of 2 or more sentences~~ reject a part of a bill section of the enrolled bill without rejecting the entire bill section.

C. Background

Prior to 1931, Wisconsin’s governors only had the power to veto bills in their entirety. In November 1930, Wisconsin’s voters approved a constitutional amendment providing that “appropriations bills may be approved in whole or in part by the governor . . .”

The partial veto power was used sparingly by Wisconsin’s governors until the 1970s. In the 1970s, governors began to use the partial veto power more often, and in more creative ways, enabled by the fact that the constitution allows bills to be approved “in part.” This has proved far more empowering than the language in many states that allows the governor to veto “items” from appropriation bills. Wisconsin governors have maximized this power over legislation through certain innovations. Among them have been the “digit veto,” whereby appropriations are radically altered by the elimination of a single digit of a large number; the “editing veto,” whereby the clear meaning of a sentence can be reversed by eliminating a cru-

cial word such as “not”; the “pick-a-letter veto,” the selective deletion of letters to form new words; and the “reduction veto” in which a figure is deleted and replaced by a lower figure. Both state and federal courts upheld these creative practices.

There have been numerous attempts over the years to curtail, eliminate, or modify the governor’s partial veto authority. Two have been successful. In April 1990, the voters approved a constitutional amendment prohibiting the governor from creating “a new word by rejecting individual letters in the words of the enrolled bill.” This amendment effectively eliminated the “pick-a-letter” veto. In April 2008, voters approved a constitutional amendment prohibiting the governor from creating new sentences “by combining parts of 2 or more sentences of the enrolled bill.” This amendment curtailed the use of the “editing veto.”

2005 Assembly Joint Resolution 68, a constitutional amendment proposed on first consideration, would have required the governor to veto whole sections of the enrolled bill, similar to a previous reform proposal, 1979 Senate Joint Resolution 16. Amendments to 2005 AJR-68 modified it to require the governor to veto whole sentences of the enrolled bill. The amendment was adopted on first consideration, but no joint resolution to give it second consideration was introduced. If it had become part of the constitution, the amendment, along with the amendment ratified in April 2008, would have eliminated the “editing veto.”

2009 Senate Joint Resolution 61, introduced by Senator Fred Risser on February 16, 2010, is identical to the original version of 2005 AJR-68: it would prohibit the governor from vetoing a part of a bill section without vetoing the whole section. If it becomes part of the constitution, it would make Wisconsin’s “partial veto” much closer in function to the “item veto” common in other states.

For a detailed discussion of the partial veto in Wisconsin, see our Informational Bulletin 04-1, *The Partial Veto in Wisconsin*.

D. Legislative Action

The legislative history of 2009 Senate Joint Resolution 61, as recorded in the *Bulletin of Proceedings*, is excerpted below:

Senate Joint Resolution 61

Relating to: prohibiting partial vetoes of parts of bill sections (first consideration).

2010

02-16.	S.	Introduced by Senators Risser, Holperin, Kreitlow, Miller and Robson ; cosponsored by Representatives Hebl, Parisi, Staskunas, Townsend, Berceau, Sinicki, Black, Roys, Jorgensen, A. Williams, Smith, Zepnick and Hraychuck .	04-13.	S.	Ordered to a third reading	694
02-16.	S.	Read first time and referred to committee on Ethics Reform and Government Operations	04-13.	S.	Rules suspended	694
02-24.	S.	Public hearing held.	04-13.	S.	Read a third time and adopted , Ayes 21, Noes 12	694
03-05.	S.	Executive action taken.	04-13.	S.	Ordered immediately messaged	701
03-05.	S.	Report adoption recommended by committee on Ethics Reform and Government Operations, Ayes 4, Noes 1	04-14.	A.	Received from Senate	830
03-05.	S.	Available for scheduling.	04-14.	A.	Read first time and referred to committee on Rules	830
04-08.	S.	Placed on calendar 4-13-2010 pursuant to Senate Rule 18(1)	04-15.	A.	Made a special order of business at 11:02 A.M. on 4-20-2010 pursuant to Assembly Resolution 23	867
04-08.	S.	Senator Carpenter added as a coauthor	04-20.	A.	Read a second time	893
04-13.	S.	Read a second time	04-20.	A.	Ordered to a third reading	893
			04-20.	A.	Rules suspended	893
			04-20.	A.	Read a third time and concurred in , Ayes 50, Noes 48	893
			04-20.	A.	Ordered immediately messaged	893
			04-21.	S.	Received from Assembly concurred in	761
			05-07.	S.	Report correctly enrolled on 5-7-2010	792
			05-11.	S.	Deposited in the office of the Secretary of State on 5-11-2010	796
			05-13.	S.	Published 5-25-2010, 8-3-2010, 9-7-2010 and 10-5-2010	800